

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
August 22, 2011 Session

ANITA BERKLEY RHODES v. CAREALL, INC. ET AL.

**Direct Appeal from the Chancery Court for Madison County
No. 66368 James F. Butler, Chancellor**

**No. W2010-02192-WC-R3-WC - Mailed November 16, 2011
Filed December 20, 2011**

An employee alleged that she sustained a right- and left-side hernia while working. Her employer denied the claim for the left-side hernia. The trial court held that both the right- and left-side hernias were compensable and awarded permanent partial disability benefits. The employer appealed.¹ We affirm the judgment of the trial court.

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right;
Judgment of the Madison Chancery Court Affirmed.**

TONY A. CHILDRESS, SP. J., delivered the opinion of the Court, in which JANICE HOLDER, J. and WALTER C. KURTZ, SR J., joined.

Catherine Bulle Clayton, Jackson, Tennessee, for the appellants, Careall, Inc. and Wausau Underwriters Insurance Co.

Jay E. Degroot, Jackson, Tennessee, for the appellee, Anita Berkley Rhodes

MEMORANDUM OPINION

Factual and Procedural Background

¹Pursuant to Tennessee Supreme Court Rule 51, this workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law.

Anita Berkley Rhodes (“Employee”) worked as a field nurse providing in-home care for patients for Careall, Inc. (“Employer”). On May 31, 2007, Employee was caring for a five-year-old patient who had cerebral palsy and was a quadriplegic. Employee had to feed, bathe, and dress the patient, and Employee was required to lift the patient every hour to change the patient’s position. On May 31, 2007, Employee transported the patient to a physical therapy appointment, and as Employee lifted the patient from a transport van, Employee felt “intense abdominal pain.” Although “the worst of [the pain] was on the right side . . . , it covered the abdomen.” After managing to put the patient in a stroller, Employee went into the physical therapy facility and asked for help.

Employee was taken by ambulance to the emergency room, where Dr. Michael Saridakis performed an emergency, right-side hernia repair. During Employee's follow up appointment with Dr. Saridakis in June of 2007, she told Dr. Saridakis that she still had “diffused pain . . . all over her abdomen” and that she was hurting “on the left side.” Employee was released to work four weeks later, but continued to have pain on the left side of her abdomen. Although Employee informed her supervisor that the pain stemmed from the incident on May 31, 2007, her supervisor took no further action.

Employee thereafter sought additional medical treatment on her own. In November 2007, she was examined by a nurse practitioner at the Family Clinic of Henderson. According to her medical records from that visit, Employee reported “lower abdominal pain.” On April 1, 2008, Dr. Keith Williams at the Jackson Clinic examined Employee. Dr. Williams performed a diagnostic laparoscopic examination on Employee that revealed “a defect in the abdominal wall on the left side in somewhat of an unusual location.” Dr. Williams referred Employee to Dr. Harvey Harmon. Dr. Harmon performed surgery to repair a left-side hernia. Employee subsequently developed a “nerve entrapment,” and Dr. Harmon performed a second procedure to correct the problem.

In June 2008, Employee returned to work and performed office work for two and one-half to three months before being assigned to provide care to a patient. Employee felt “pulling” in her abdominal area whenever she had to move the patient. In November or December 2008, Employer terminated Employee for an alleged “no call – no show” violation. Employee denied that she ever missed or was late for work. Employee later obtained employment as a chain intake nurse for Corrections Corporation of America.

Employee filed a complaint for workers’ compensation benefits in the Chancery Court of Madison County. Employee was fifty-four years old at the time of trial and was still employed by Corrections Corporation of America.

Dr. Saridakis, who testified by deposition, stated that Employee was examined in the emergency room after reporting “an acute, severe attack of abdominal pain causing her to double over.” Upon examining Employee and reviewing a radiologist’s report of a CT Scan, Dr. Saridakis found “an incarcerated right lower quadrant abdominal hernia.” He found no evidence of a hernia on the left side, and he stated that Employee was “negative for bilateral inguinal hernia.” Dr. Saridakis surgically repaired Employee's right-side hernia. One week later, Employee was “doing well,” had an appetite, and had no problems with her bowel or bladder. Dr. Saridakis instructed Employee not to lift anything weighing more than thirty pounds for two more weeks. Dr. Saridakis acknowledged that Employee called his office in February 2008 and complained of a lump in her lower left quadrant. According to medical records, Employee was given an appointment but she did not show up for the appointment. Dr. Saridakis testified that Employee had no permanent impairment as a result of the May 31, 2007 incident.

Dr. Harmon testified by deposition. Dr. Harmon testified that if Dr. Saridakis had performed an open procedure on Employee on May 31, 2007, he “wouldn’t have seen anything on the left side.” Dr. Harmon testified that Dr. Saridakis’s operative report indicates that Dr. Saridakis performed an open procedure on May 31, 2007. Dr. Harmon stated that a patient’s obesity may make a hernia harder to detect with palpation. In Dr. Harmon’s opinion, the left-side hernia was consistent with an “older” hernia that had been present “quite some time.” Dr. Harmon stated that it was “unusual for one incident to produce two hernias in two different places,” but that it was “possible” that Employee’s left-side hernia resulted from the May 31, 2007 incident. Dr. Harmon testified that Dr. Saridakis would be in a better position than he to know if the left-side hernia existed on May 31, 2007. Dr. Harmon, who was unfamiliar with the American Medical Association Guides, was of the opinion that Employee had no permanent impairment from the hernia repairs.

Dr. Apurva Dalal testified by deposition. Dr. Dalal stated that he examined Employee on March 1, 2010, and that he reviewed Employee’s medical history and records. In Dr. Dalal’s view, Employee suffered right- and left-sided hernias from the incident on May 31, 2007. Dr. Dalal stated that “they focused all their attention on the right side” because the right-side hernia was worse than the left-side hernia. Dr. Dalal stated that the “left hernia symptoms were . . . masked by [the] much more severe hernia on the right side because it was a strangulated hernia.” After examining Employee, Dr. Dalal stated that he found that:

There was a moderate impulse on the right side. There was a small palpable defect on the right side. There was no evidence of any neurological abnormality on the right side. There was a slight protrusion at the site. . . .
There was a positive pulse and a palpable defect on the left side with persistent

protrusion. She has a significant loss of sensation in the femoral nerve and genitofemoral nerve distribution on the left side.

Dr. Dalal opined that Employee's right- and left-side hernias were caused by the work-related incident on May 31, 2007, and that Employee sustained an 8% permanent impairment to the body for the right-side hernia repair and a 15% permanent impairment to the body for the left-side hernia repair.

Dr. Samuel J. Chung testified by deposition. Dr. Chung stated that he examined Employee on January 15, 2009. Dr. Chung summarized Employee's medical history by stating that "the patient slowly improved from the surgery and improved in overall general pain." Dr. Chung stated that Employee "developed left lower quadrant pain" for which there "was no clear explanation. . . ." He stated that Employee had "a slight palpable defect on the supporting structure on both sides" and "decreasing sensation to the left thigh in the genitofemoral region of the left quadriceps region." Dr. Chung opined that Employee's right-side hernia resulted from the incident on May 31, 2007, and that "the second hernia derived . . . after the initial surgery was performed and healed, and then weakness that followed from that area caused the direct inguinal hernia in the left side." Dr. Chung assigned a 9% permanent impairment due to the right-side hernia repair and a 9% permanent impairment due to the left-side hernia repair.

The trial court determined that Employee has an anatomical impairment of 8% to the body as a whole for her right-side hernia and an anatomical impairment of 15% to the body as a whole for her left-side hernia. The trial court also determined that Employee has a vocational disability of 16% to the body as a whole for her right-side hernia and a vocational disability of 35% to the body as a whole impairment for her left-side hernia. The trial court awarded benefits based on 51% permanent partial disability to the body as a whole. Employer has appealed.

Standard of Review

In a workers' compensation appeal, the standard of review of issues of fact is "de novo upon the record of the trial court, accompanied by a presumption of correctness of the finding, unless the preponderance of evidence is otherwise." Tenn. Code Ann. § 50-6-225(e)(2) (2008). When credibility and weight to be given testimony are at issue, considerable deference is given to the trial court when the trial judge had the opportunity to observe the witnesses' demeanor and to hear in-court testimony. Madden v. Holland Grp. of Tenn., Inc., 277 S.W.3d 896, 900 (Tenn. 2009). "When the issues involve expert medical testimony that is contained in the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions,

and the reviewing court may draw its own conclusions with regard to those issues.” Foreman v. Automatic Sys., Inc., 272 S.W.3d 560, 571 (Tenn. 2008). A trial court’s conclusions of law are reviewed de novo upon the record with no presumption of correctness. Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

Analysis

Causation

Employer argues that claimants in cases involving hernias or ruptures must establish the elements of causation with “absolutely certainty” under Tennessee Code Annotated section 50-6-212 (2005) and that the trial court erred in finding that Employee’s left-side hernia resulted from the May 31, 2007 incident. Employer relies on the testimony of Dr. Saridakis, who stated that Employee did not have a left-side hernia when examined on May 31, 2007. Employee argues that the evidence does not preponderate against the trial court’s findings.

Our Supreme Court has recently reviewed the standard to be applied in evaluating evidence concerning the issue of causation in workers’ compensation cases:

Generally speaking, a workers’ compensation claimant must establish by expert medical evidence the causal relationship between the alleged injury and the claimant’s employment activity, “[e]xcept in the most obvious, simple and routine cases.” Cloyd v. Hartco Flooring Co., 274 S.W.3d 638, 643 (Tenn. 2008) (quoting Orman v. Williams Sonoma, Inc., 803 S.W.2d 672, 676 (Tenn. 1991)). The claimant must establish causation by the preponderance of the expert medical testimony, as supplemented by the evidence of lay witnesses. Id. As we observed in Cloyd, the claimant is granted the benefit of all reasonable doubts regarding causation of his or her injury.

Excel Polymers, LLC v. Broyles, 302 S.W.3d 268, 274 (Tenn. 2009).

The General Assembly has provided the elements that must be satisfied to prove a workers’ compensation claim based on hernia or rupture in Tennessee Code Annotated section 50-6-212(a):

In all claims for compensation for hernia or rupture, . . . it must be definitely proven to the satisfaction of the court that:

- (1) There was an injury resulting in hernia or rupture;

- (2) The hernia or rupture appeared suddenly;
- (3) It was accompanied by pain;
- (4) The hernia or rupture immediately followed the accident; and
- (5) The hernia or rupture did not exist prior to the accident for which compensation is claimed.

As a threshold issue, we disagree with Employer's assertion that Tennessee Code Annotated section 50-6-212(a) requires that the elements of causation to be proven with "absolute certainty." The purpose of Tennessee Code Annotated section 50-6-212(a) is "to remove the issue as far as possible from the field of conjecture and speculation" claims for compensation made for hernias and ruptures. Wood v. Eddenfield Elec. Co., 364 S.W.2d 908, 909 (Tenn. 1963) (citing Matthews v. Hardaway Contracting Co., 163 S.W.2d 59 (Tenn. 1942)). The statutory criteria set forth in Tennessee Code Annotated section 50-6-212(a) are intended to insure that a claimant's hernia or rupture "result[ed] from 'the accident for which compensation is claimed,' and not to a past condition which is unrelated to the new injury." Capps v. Goodlark Med. Ctr., Inc., 804 S.W.2d 887, 889 (Tenn. 1991). The phrase "definitely proven to the satisfaction of the trial court" does not in any way alter the claimant's burden to establish a compensable injury by a preponderance of the evidence. See Excel Polymers, LLC, 302 S.W.3d at 274. Tennessee Code Annotated section 50-6-212(a) simply establishes five specific elements that claimants making claims for compensation for hernias or ruptures must prove in order to receive compensation for hernias or ruptures. Each of these elements must be proven by a preponderance of the evidence.

We also disagree with Employer's argument that the evidence preponderates against the trial court's findings as to causation. The trial court heard Employee's in-court testimony that she had immediate pain in her entire abdomen while lifting a patient in the course and scope of her employment on May 31, 2007. This pain required Employee to be transported to an emergency room by ambulance. Employee testified that she continued to have discomfort and pain in her entire abdomen after her right-side hernia was repaired, including the lower left quadrant. Employee testified that she told her supervisor of her continued pain stemming from the May 31, 2007 incident, but that she had to obtain additional examinations and medical treatment on her own. Employee ultimately underwent surgery to repair a left-side hernia.

The trial court also considered extensive medical testimony from Dr. Saridakis, Dr. Harmon, Dr. Dalal, and Dr. Chung. The trial court was "more persuaded that the left hernia did occur at the same time as the right hernia" and that "the right[-]sided hernia needed the emergency surgery and the pain was masked on the left side to some extent." Although Dr. Saridakis did not find the left-side hernia, the trial court found that this was "because of the nature of his operation procedure and the plaintiff's obesity." Dr. Harmon testified that it

was “unusual” but “possible” that Employee suffered both hernias in one incident occurring on May 31, 2007. Moreover, Dr. Harmon stated that the left-side hernia, which he repaired in April 2008, was consistent with an “older” hernia that had been present “quite some time.” Dr. Harmon also testified that Dr. Saridakis “wouldn’t have seen anything on the left side” if he procedure he performed on Employee on May 31, 2007, was an “open procedure.” Dr. Harmon also testified that the procedure Dr. Saridakis performed on May 31, 2007, was an “open procedure.” Dr. Dalal opined that Employee suffered both hernias at the same time but that the “left hernia symptoms were . . . masked by [the] much more severe hernia on the right side.”

We conclude that the evidence in the record does not preponderate against the trial court's findings that “the left hernia was caused by the May 31, 2007 accident at work, that it was definitely proven, that it appeared suddenly accompanied by pain immediately following the accident, and did not exist prior to the accident.” Accordingly, we affirm the trial court’s determination.

Vocational Disability

Employer’s final argument is that the trial court erred in finding that Employee sustained a permanent disability. To support this argument, Employer relies on the testimony of Drs. Saridakis and Harmon, both of whom testified that Employee had no permanent impairment resulting from either the right- or left-side hernia repairs. Employee argues that the evidence does not preponderate against the trial court’s findings of impairment.

In making determinations on vocational disability the trial court shall consider all pertinent factors, including lay and expert testimony, employee’s age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant’s disabled condition. Tenn. Code Ann. § 50-6-241 (2008); Worthington v. Modine Mfg. Co., 798 S.W.2d 232, 234 (Tenn.1990); Roberson v. Loretto Casket Co., 722 S.W.2d 380, 384 (Tenn.1986).

A claimant’s assessment of her physical condition and resulting disabilities may not be disregarded. Uptain Constr. Co. v. McClain, 526 S.W.2d 458, 459 (Tenn.1975). The trial court is not bound to accept physicians’ opinions regarding the extent of a claimant’s disability. Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 677 (Tenn.1983). Instead, the trial court is to “consider all the evidence, both expert and lay testimony, to decide the extent of an employee’s disability.” Walker v. Saturn Corp., 986 S.W.2d 204, 208 (Tenn. 1998) (citing Hinson, 654 S.W.2d at 677).

The trial court considered both Employee's in-court testimony and the extensive medical testimony. Employee testified about her professional experience, her work history, her employment duties with Employer, and the May 31, 2007 incident. Employee further testified that, following her injuries, she obtained her Registered Nurse (RN) degree and was hired as a chain intake nurse for Corrections Corporation of America. In that capacity Employee primarily interviews and examines inmates, but she is not required to lift or move patients. Employee testified that she has problems stooping, bending, and lifting, and that she continues to have pain and discomfort in her abdomen after working long hours. Employee also testified that the repair to the left hernia resulted in the top of her left thigh becoming partially numb. Although Dr. Saridakis and Dr. Harmon stated that Employee had no impairment, the trial court emphasized that Dr. Saridakis had never seen the American Medical Association Guides prior to his deposition and that Dr. Harmon was not familiar with the American Medical Association Guides. In contrast, the trial court observed that it was "more persuaded by Dr. Dalal and Dr. Chung in their assessment of the [Employee]'s impairment." In particular, the trial court found that "Dr. Dalal's rating is justified and accurate" because "he found residual neuropathy, and [Employee] met other criteria in Class II, Table 16-9."

We conclude that the evidence in the record does not preponderate against the trial court's findings that Employee sustained 16% impairment for her right-side hernia and 35% impairment for her left-side hernia. Accordingly, we affirm the decision of the trial court.

Conclusion

The trial court's judgment is affirmed. Costs are assessed to Employer, Careall, Inc., and Wausau Underwriters Insurance Company, for which execution may issue, if necessary.

TONY A. CHILDRESS, JUDGE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
August 22, 2011

ANITA BERKLEY RHODES v. CAREALL, INC., ET AL.

**Chancery Court for Madison County
No. 66368**

No. W2010-02192-WC-R3-WC - Filed December 20, 2011

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs on appeal are taxed to Appellants, Careall, Inc., and Wausau Underwriters Insurance Co., and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM